IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.1147 OF 2005
WITH
CIVIL APPLICATION NO. 1148 OF 2005

G.S.L.(India) Ltd. ..Appellant.

V/s.

Smt.Lakshmi Harihar & Anr. ..Respondents.

Mr.Chaurasia for A.M.Saraogi for appellant.

Mr.Glenn A. Lobo for respondent No.1.

CORAM: A.M.KHANWILKAR,J

DATE : JANUARY 31, 2006.

P.C. :

1. Heard counsel for the parties. Perused the pleadings and the documents on record.

2. Admit.

3. As short question involves in this appeal, appeal is taken up for hearing forthwith by consent.

4. This appeal from order takes exception to the order passed by the City Civil Court, Bombay dated November 29, 2005 in Notice of Motion No.3421 of 2003. The said Notice of Motion was filed for injunction against the defendants from causing

obstruction in use, occupation and possession of the plaintiff in respect of gala No.304 situated in New India Industrial Premises Co-operative Society Ltd.save and except by following due process of law. The Notice of Motion has been dismissed essentially on account of inability of the advocate who had appeared for the plaintiff in the lower court to point out the pleadings relating possession or any document to support plea of possession. Indeed, the trial court may be justified to that extent. But that does not mean that the court has no duty to advert to the relevant affidavit, which was already on record and the supporting documents placed alongwith the affidavit, which are also pressed into service before this court being Exh.B to I from pages 40 to 63. From the said documents, prima facie, it appears that the appellant/plaintiff was put in possession of the disputed premises. The trial court has also overlooked the fact that the defendant had not filed any reply to the Notice of Motion. If it is so, the averments made in the affidavit in support of the Notice of Motion will have to be accepted as it is being uncontroverted. On that assumption the factum of possession is clearly established by the plaintiff.

5. Suffice it to observe that the course adopted by the trial court in disposing of the Notice of Motion by the impugned order is unacceptable. The appropriate course to my mind is to set aside the impugned order and relegate the parties before the trial court by restoring the Notice of Motion to its original number on its file for being heard and decided in accordance with the law.

6. It will be open to the respondents/defendants to file reply affidavit, if so advised.

7. Till such time Notice of motion is not disposed of or till such appropriate orders are passed by the trial court, the parties are directed to maintain status quo with regard to the suit property.

8. This appeal succeeds on the above terms. All questions are left open.

9. The trial court shall decide the Notice of Motion uninfluenced by any observations made in this order.

10. Civil application disposed of accordingly.